



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 130405338-4987-02]

RIN 0648- BC84

Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Trawl Rationalization Program; Chafing Gear Modifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This action modifies the existing chafing gear regulations for midwater trawl gear. This action includes regulations that affect all trawl sectors (Shorebased Individual Fishing Quota Program (IFQ), Mothership Cooperative Program (MS), Catcher/Processor Cooperative Program (C/P), and tribal fishery) managed under the Pacific Coast Groundfish Fishery Management Plan (PCGFMP). Many Pacific whiting vessels also fish in the Alaska groundfish fisheries. This action establishes chafing gear restrictions for the Pacific Coast groundfish fishery that are more compatible with those for the Gulf of Alaska groundfish and Bering Sea and Aleutian Islands groundfish fisheries.

DATES: Effective January 1, 2015.

ADDRESSES: NMFS prepared a Final Regulatory Flexibility Analysis (FRFA),

which is summarized in the Classification section of this final rule. NMFS also prepared an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule. Copies of the IRFA, FRFA and the Small Entity Compliance Guide are available from William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or by phone at 206–526–6150. Copies of the Small Entity Compliance Guide are available on the West Coast Region’s Web site at <http://www.westcoast.fisheries.noaa.gov/>. FOR FURTHER INFORMATION CONTACT: Becky Renko, 206-526-6110; (fax) 206-526-6736; Becky.Renko@noaa.gov.

SUPPLEMENTARY INFORMATION: This final rule modifies the chafing gear regulations that apply to all midwater trawl gear. Chafing or chafer panels are webbing or other material attached to the codend to minimize damage from wear caused by the codend rubbing against the stern ramp and trawl alley during net retrieval and from contact with the ocean floor.

Midwater trawl gear is effective for targeting groundfish species that ascend above the ocean floor and is not designed to make frequent contact with the ocean floor. The only gear allowed for the targeting of Pacific whiting during the Pacific whiting primary seasons for the shorebased IFQ program, MS coop program, and CP coop program is midwater trawl gear. Midwater trawl gear is also used in the shorebased IFQ program to target non-whiting species such as widow, yellowtail, and chilipepper rockfish. A proposed rule was published in the Federal Register on March 19, 2014 (79 FR 15296), followed by a correction which was published on April 4, 2014 (79 FR 18876).

During the proposed rule comment period, NMFS specifically sought comments on the proposed method of attachment for chafing gear, including the benefits and effects relative to current minimum mesh size restrictions and the prohibition on double-walled codends. Only

single-walled codend are allowed in Pacific Coast groundfish regulations and this rule does not change that restriction. A single-walled codend is constructed of a single wall of webbing knitted with single or double-bar mesh (double twine tied into a single knot). A double-walled codend is constructed of two walls (layers) of webbing. The prohibition on the use of double-walled codends was developed by the Council in the 1990s to ensure the success of minimum mesh size restrictions. Minimum mesh size restrictions are intended to reduce the catch of juvenile and small unmarketable fish (groundfish and non-groundfish species). To prevent chafing gear from being used to create the effect of a double-walled codend, NMFS identified an interest in adding regulatory language to the final rule to further clarify the existing regulatory prohibition of double-walled codends (§ 660.130(b)(1)).

This rule also includes minor technical revisions to related regulatory text. Section 660.11, General definitions, contains basic descriptions of small footrope, large footrope and midwater trawl gear while the in-depth descriptions of these trawl gears found in § 660.130. Modifications at § 660.130 eliminate redundancy with § 660.11 and increase clarity.

Response to Comments

One letter of comment was received from an individual representing members of the Pacific whiting industry who are directly affected by the rulemaking.

Comment 1: NMFS states in the proposed rule that they are considering clarifying the chafing gear regulation to prevent creating an incentive to use chafing gear to make a double-walled codend. However, NMFS provides no information in the proposed rule about how the proposed chafing gear regulations relate to the creation of a double-walled codend. To the contrary, the regulations as proposed do not create an incentive for fishermen to fashion a double-walled codend because the chafing gear can only cover up to 75 percent of the codend

and the top panel of the codend will remain open. Putting aside the fact that the entirety of the codend will not be covered with chafing gear, NMFS appears to request input about the potential for the creation of a double-walled codend because this has the potential to increase the catch of smaller fish and incidental catch of non-whiting species. However, doing this in the Pacific whiting fishery is counter intuitive because maximizing utilization and minimizing bycatch are standard practices. Similarly, NMFS states that the proposed rule might create an incentive for bottom contact with the codend. Given the fishing dynamics of a whiting midwater trawl, this is nearly impossible. These are not reasons to justify modification of the proposed rule language, especially in regards to the catcher/processor sector of the whiting fishery.

The proposed rule language most closely matches current industry practice. Any deviation from the PFMC recommendation will cause disruption and economic hardship to the fleet with no conservation or other benefit to fisheries or habitat. The rule language as proposed is well justified and should be implemented as soon as possible.

Response: When the chafing gear provisions were originally implemented, the Council's stated intent was to maintain the minimum mesh size restrictions so small fish could escape. The proposed rule did not consider changing regulations on minimum mesh size restrictions or the required use of single-walled codends (use of double-walled codends is prohibited). Therefore, NMFS believes it is necessary to maintain the Council's intent for the minimum mesh size restriction and double-walled codend prohibition, by simply adding regulatory text to state that chafing gear may not be used to create a double-walled codend.

The request for comment applied to all midwater trawl gear regardless of the target species and was not specific to vessels targeting Pacific whiting. With the growth in non-whiting midwater fishing, gear configurations could differ from those used in the Pacific whiting fishery.

NMFS is clarifying the regulations so the intent of the gear regulations is maintained relative to minimum mesh size restrictions and the prohibition on the use of double-walled codends.

The data used in the analysis for this action shows that Pacific whiting vessels using midwater trawl gear, including those in the C/P sector, make occasional contact with the ocean floor. While NMFS recognizes that there is occasional bottom contact by midwater trawl, this final rule does not change regulations to address that occasional bottom contact.

With this final rule, NMFS is implementing the Council's recommendation for chafing gear and maintaining the Council's intent to allow escapement of small fish from the codend of midwater trawl gear. The gear restrictions on minimum mesh size and a prohibition on double-walled codends are existing requirements. All of the changes in this final rule either relieve a restriction or further clarify an existing restriction. Therefore, these changes would not cause disruption or economic hardship.

Changes From the Proposed Rule

In the trawl fishery management measures at § 660.130(b)(1) pertaining to the trawl codends, clarification is added to prevent vessel operators from using chafing gear to create a double-walled codend. The Council did not explicitly consider changes to the minimum mesh size restrictions or the requirement to use a single walled codend. Therefore, clarifications are being made to the regulations to preserve the intent of those regulations to allow small fish to escape given the changes to chafing gear restrictions.

Classification

NMFS has made a determination that this action is consistent with PCGFMP, the MSA, and other applicable law. To the extent that the regulations in this final rule differ from what was deemed by the Council, NMFS invokes its independent authority under 16 U.S.C. 1855(d).

In making this determination, NMFS took into account the complete record, including the data, views, and comments received during the comment period.

An EA was prepared for this action. The EA is available on the Council's website at <http://www.pcouncil.org/>.

Pursuant to the procedures established to implement section 6 of Executive Order 12866, the Office of Management and Budget (OMB) has determined that this rule is not significant.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) in support of this action. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' response to those comments, relevant analysis contained in the action and its EA, and a summary of the analyses in this rule. A copy of the analyses and the EA are available from the NMFS (see Addresses). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

In addition to clarifying existing regulations, this rule revises the regulations to conform to current industry chafing gear practices while increasing the flexibility of vessel owners to make chafing gear modifications according to their own individual operations and needs. Only one comment was received on the proposed rule (See Response to Comments section above.) This comment did not raise any issues or concerns related to the IRFA but confirmed that this final rule closely matches current industry practice. No changes were made to this final rule as a result of the comment.

This final rule would affect those vessels that use midwater trawl gear in Pacific Coast groundfish fisheries. Midwater trawl gear is used by catcher/processors, mothership catcher vessels, and vessels that deliver to Shoreside processors. According to the Small Business Administration (SBA), a business involved in finfish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation, and has combined annual receipts, not in excess of \$20.5 million for all its affiliated operations worldwide. After taking into account vessels that fish in multiple midwater fisheries and their affiliations, NMFS estimates that there are 28 midwater businesses, 22 of which are small businesses.

In addition to No Action, two alternatives were considered. The No Action Alternative would limit chafing gear to the very end of the codend (the last 50 mesh lengths) and 50 percent of the codend's circumference via a single panel. Under Alternative 1 (Council Preferred Alternative), fishermen would have the option of covering up to 100 percent of the length of the codend and up to approximately 75 percent of the codend's circumference through the use of a single panel or multiple panels. Alternative 2A, fishermen would have the option of covering up to 100 percent of the length of the codend and up to 50 percent of the codend's circumference through the use of a single panel or multiple panels. Under Alternative 2B, fishermen would have the option of covering up to 50 percent of the length of the codend and up to 50 percent of the codend's circumference; however, no single panel could cover more than 50 meshes of the codend.

Adoption of any alternative other than the No Action Alternative would increase the useful life of the codend by allowing for greater protection against abrasion and wear. Currently, most fishermen are using gear compliant with Alternative 2B, so there would be no additional costs associated with this alternative. The No Action Alternative would require vessel owners to

remove chafing gear which is estimated to be a one-time cost between \$5,000 and \$10,000. As a result, their nets will have the least amount of protection and thus have to be replaced more often. Alternative 1 is the Council's Preferred Alternative allows fishermen more flexibility and comports with the chafing gear currently used by the majority of the fleet that fish in both Pacific Coast and Alaska fisheries allowing the same gear to be used in both regions.. Data in the EA shows that 62 percent of Pacific Coast whiting vessels also fished off Alaska between 2004 and 2010. The codend replacement costs are highest under No Actions and lowest under the Council Preferred Alternative. This rule implements the Council Preferred Alternative which closely matches current industry practice and is not likely to have a significant economic impact on any entity, large or small.

Copies of the Small Entity Compliance Guide prepared for this final rule are available on the West Coast Region's Web site at <http://www.westcoast.fisheries.noaa.gov/>.

This final rule does not contain a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA).

Pursuant to Executive Order 13175, this final rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the PCGFMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. The proposed regulations, which have a direct effect on the tribes, were deemed by the Council as "necessary or appropriate" to implement the PCGFMP as amended.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and

December 15, 1999, pertaining to the effects of the PCGFMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the PCGFMP is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006, concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior “no jeopardy” conclusion. NMFS also reaffirmed its prior determination that implementation of the PCGFMP is not likely to jeopardize the continued existence of any of the affected species. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

On January 22, 2013, NMFS requested the reinitiation of the biological opinion for listed salmonids to address changes in the fishery, including the trawl rationalization program and the

emerging midwater trawl fishery. The consultation will not be completed prior to publication of this rule to modify chafing gear regulations for the Pacific whiting fishery. NMFS has considered the likely impacts on listed salmonids for the period of time between the final rule and the completion of the reinitiated consultation relative to sections 7(a)(2) and 7(d) of the ESA. On December 18, 2013, NMFS determined that ongoing fishing under the PCGFMP, assuming that the chafing gear modifications are implemented in 2014, prior to the completion of the consultation would not be likely to jeopardize listed salmonids or result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any necessary reasonable and prudent alternatives.

On December 7, 2012, NMFS completed a biological opinion concluding that the groundfish fishery is not likely to jeopardize non-salmonid marine species including listed eulachon, green sturgeon, humpback whales, Steller sea lions, and leatherback sea turtles. The opinion also concludes that the fishery is not likely to adversely modify critical habitat for green sturgeon and leatherback sea turtles. An analysis included in the same document as the opinion concludes that the fishery is not likely to adversely affect green sea turtles, olive ridley sea turtles, loggerhead sea turtles, sei whales, North Pacific right whales, blue whales, fin whales, sperm whales, Southern Resident killer whales, Guadalupe fur seals, or the critical habitat for Steller sea lions. With this rulemaking, an informal consultation on eulachon was initiated on January 21, 2013. NMFS considered whether the 2012 opinion should be reconsidered for eulachon in light of new information from the 2011 fishery and the proposed chafing gear modifications and determined that information about the eulachon bycatch in 2011 and chafing gear regulations did not change the anticipated extent of effects of the action, or provide any other basis to reinitiate the December 7, 2012 biological opinion. Therefore, the December 7,

2012 biological opinion meets the requirements of section 7(a)(2) of the ESA and implementing regulations at 50 CFR 402 and no further consultation is required at this time.

On November 21, 2012, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion concluding that the groundfish fishery will not jeopardize the continued existence of the short-tailed albatross. The FWS also concurred that the fishery is not likely to adversely affect the marbled murrelet, California least tern, southern sea otter, bull trout, nor bull trout critical habitat.

This rule would not alter the effects on marine mammals over what has already been considered for the fishery. West Coast pot fisheries for sablefish are considered Category II fisheries under the MMPA's List of Fisheries, indicating occasional interactions. All other West Coast groundfish fisheries, including the trawl fishery, are considered Category III fisheries under the MMPA, indicating a remote likelihood of or no known serious injuries or mortalities to marine mammals. On February 27, 2012, NMFS published notice that the incidental taking of Steller sea lions in the West Coast groundfish fisheries is addressed in NMFS' December 29, 2010 Negligible Impact Determination (NID) and this fishery has been added to the list of fisheries authorized to take Steller sea lions (77 FR 11493, February 27, 2012). On September 4,

2013, based on its negligible impact determination dated August 28, 2013, NMFS issued a permit for a period of three years to authorize the incidental taking of humpback whales by the sablefish pot fishery (78 FR 54553, September 4, 2013).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: November 25, 2014

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 is revised to read as follows:

Authority: 16 U.S.C. 1801 et seq., 16 U.S.C. 773 et seq., and 16 U.S.C. 7001 et seq.

2. In § 660.130, paragraph (b) and the introductory text of paragraph (c) are revised to read as follows:

§ 660.130 Trawl fishery—management measures

* * * * *

(b) Trawl gear requirements and restrictions. Trawl nets may be fished with or without otter boards, and may use warps or cables to herd fish.

(1) Codends. Only single-walled codends may be used in any trawl. Double-walled codends are prohibited. Chafing gear may not be used to create a double-walled codend.

(2) Mesh size. Groundfish trawl gear, including chafing gear, must meet the minimum mesh size requirements in this paragraph. Mesh size requirements apply throughout the net. Minimum trawl mesh sizes are: Bottom trawl, 4.5 inches (11.4 cm); midwater trawl, 3.0 inches (7.6 cm). Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, less one thickness of the metal wedge, can be passed with only thumb pressure through at least 16 of 20 sets of two meshes each of wet mesh.

(3) Bottom trawl gear — (i) Large footrope trawl gear. Lines or ropes that run parallel to the footrope may not be augmented with material encircling or tied along their length such that they have a diameter larger than 19 inches (48 cm). For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(ii) Small footrope trawl gear. Lines or ropes that run parallel to the footrope may not be augmented with material encircling or tied along their length such that they have a diameter larger than 8 inches (20 cm). For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(A) Selective flatfish trawl gear. Selective flatfish trawl gear is a type of small footrope trawl gear. The selective flatfish trawl net must be a two-seamed net with no more than two riblines, excluding the codend. The breastline may not be longer than 3 ft (0.92 m) in length. There may be no floats along the center third of the headrope or attached to the top panel except on the riblines. The footrope must be less than 105 ft (32.26 m) in length. The headrope must be not less than 30 percent longer than the footrope. The headrope shall be measured along the

length of the headrope from the outside edge to the opposite outside edge. An explanatory diagram of a selective flatfish trawl net is provided as Figure 1 of part 660, subpart D.

(B) [Reserved]

(iii) Chafing gear restrictions for bottom trawl gear. Chafing gear may encircle no more than 50 percent of the net's circumference and may be in one or more sections. Chafing gear may be used only on the last 50 meshes, measured from the terminal (closed) end of the codend. Only the front edge (edge closest to the open end of the codend) and sides of each section of chafing gear may be attached to the codend; except at the corners, the terminal edge (edge closest to the closed end of the codend) of each section of chafing gear must not be attached to the net. Chafing gear must be attached outside any riblines and restraining straps.

(4) Midwater (pelagic or off-bottom) trawl gear. Midwater trawl gear must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere on any part of the net. The footrope of midwater gear may not be enlarged by encircling it with chains or by any other means. Ropes or lines running parallel to the footrope of midwater trawl gear must be bare and may not be suspended with chains or any other materials. Sweep lines, including the bottom leg of the bridle, must be bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16-inch (40.6-cm) minimum mesh size must completely encircle the net.

(i) Chafing gear restrictions for midwater trawl gear. Chafing gear may cover the bottom and sides of the codend in either one or more sections. Only the front edge (edge closest to the open end of the codend) and sides of each section of chafing gear may be attached to the codend; except at the corners, the terminal edge (edge closest to the closed end of the codend) of each

section of chafing gear must not be attached to the net. Chafing gear is not permitted on the top codend panel except as provided in paragraph (b)(4)(ii) of this section.

(ii) Chafing gear exception for midwater trawl gear. A band of mesh (a “skirt”) may encircle the net under or over transfer cables, lifting or splitting straps (chokers), riblines, and restraining straps, but must be the same mesh size and coincide knot-to-knot with the net to which it is attached and be no wider than 16 meshes.

(c) Restrictions by limited entry trawl gear type. Management measures may vary depending on the type of trawl gear (i.e., large footrope, small footrope, selective flatfish, or midwater trawl gear) used and/or on board a vessel during a fishing trip, cumulative limit period, and the area fished. Trawl nets may be used on and off the seabed. For some species or species groups, Table 1 (North) and Table 1 (South) of this subpart provide trip limits that are specific to different types of trawl gear: Large footrope, small footrope (including selective flatfish), selective flatfish, midwater, and multiple types. If Table 1 (North) and Table 1 (South) of this subpart provide gear specific limits for a particular species or species group, it is unlawful to take and retain, possess or land that species or species group with limited entry trawl gears other than those listed. The following restrictions are in addition to the prohibitions at § 660.112(a)(5).

* * * * *

[FR Doc. 2014-28275 Filed 12/01/2014 at 8:45 am; Publication Date: 12/02/2014]